

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DACE SMITH,

Plaintiff,

-against-

9:03-CV-1233

Dr. HAIDER-SMITH, Facility Physician;  
S. MARTIN-KARAS,

Defendants.

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THOMAS J. McAVOY,  
Senior United States District Judge

**DECISION & ORDER**

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. Randolph F. Treece, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(c) of the Local Rules of the Northern District of New York. A Report-Recommendation dated August 5, 2005 was received by this Court from Magistrate Judge Treece in which he recommended that the Court dismiss the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. No objections to the Report-Recommendation have been raised. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein and will dismiss this

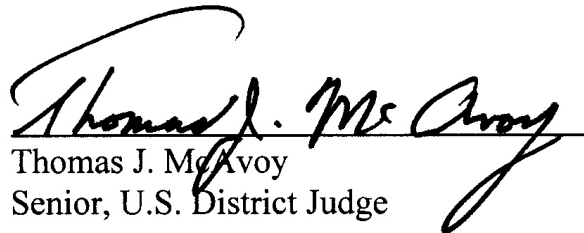
matter. Inasmuch as the Plaintiff proceeds *pro se* and may not have understood that the failure to prosecute could constitute an adjudication on the merits, the dismissal be without prejudice.

Therefore, **it is hereby**

**ORDERED** that pursuant to FED. R. CIV. P. 41(b) and Local Rule 41.2, the action is **DISMISSED without prejudice**.

**IT IS SO ORDERED**

DATED: September 8, 2005

  
Thomas J. McAvoy  
Senior, U.S. District Judge